

ESTTA Tracking number: **ESTTA611907**

Filing date: **06/24/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Vesture Group, Inc.		
Entity	Corporation	Citizenship	California
Address	2220 N. Screenland Drive Burbank, CA 91505 UNITED STATES		

Attorney information	Wesley W. Lew Robins, Kaplan, Miller & Ciresi L.L.P. 2049 Century Park East, Suite 3400 Los Angeles, CA 90067 UNITED STATES wwlew@rkmc.com Phone:(310)552-0130
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Registration Subject to Cancellation

Registration No	4232113	Registration date	10/30/2012
Registrant	Pulse Creations, Inc. 15A Maple Drive Port Washington, NY 11050 UNITED STATES		

Goods/Services Subject to Cancellation

Class 025. First Use: 1981/02/14 First Use In Commerce: 1981/02/14 All goods and services in the class are cancelled, namely: Blouses, Shirts, Pants, Shorts, Jackets, Dresses, Jumpsuits, Rompers, Loungewear, and Sleepwear excluding baby, juvenile and toddler clothing and accessories
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Grounds for Cancellation

Abandonment	Trademark Act section 14
Other	Non-use; Trademark Act section 14

Attachments	Petition for Cancellation of 4232113 (Pinky).pdf(1844847 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Wesley W. Lew/
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Name	Wesley W. Lew
Date	06/24/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of U.S. Trademark Registration No.: 4232113
For the Mark: PINKY
Date of Registration: October 30, 2012

Vesture Group, Inc.,

Petitioner,

v.

Pulse Creations, Inc.,

Registrant.

Cancellation No.:

Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Vesture Group, Inc., a corporation organized and existing under the laws of California, having a business address of 2220 N. Screenland Drive, Burbank, California, United States (“Petitioner”), believes that it is being damaged and will continue to be damaged by U.S. Registration No. 4232113, issued October 30, 2012, for the mark PINKY in Class 25 (the “Registration”), registered to Pulse Creations, Inc., a New York Corporation with an address of 15A Maple Drive, Port Washington, New York, United States (“Respondent”), and hereby petitions to cancel the registration of said mark, pursuant to 15 U.S.C.A. § 1064.

As grounds in support of its petition for cancellation, Petitioner asserts as follows:

1. Petitioner is the owner of U.S. Trademark Application Ser. No. 85919298 for PINKY LOS ANGELES, filed on April 30, 2013 covering “apparel namely tank

tops, cotton woven shirts, knit shirts, polo shirts, t-shirts, sweat shirts, crew neck shirt, sweatshirts, cotton jackets, leather jackets, denim jackets, outer jackets, hats, caps, visors, hoods, head bands, sweat bands, kerchiefs, scarves, bandannas, neckerchiefs, gloves, socks, shorts, pants and vests, men's, women's and children's underwear namely briefs, boxers, bikini underwear, one piece and two piece garments, nightgowns, nightshirts, skirts, dresses, overalls, short pants, capri pants, blouses and sweaters," in Class 25 (the "Application"). See Exhibit A, attached hereto.

2. Petitioner is being harmed by the Registration because the PTO Examining Attorney has refused the Application for registration on grounds that the Application is likely to be confused with the prior pending Registration. See Exhibit B, attached hereto.

3. Upon information and belief, Respondent is not currently using the PINKY mark as a trademark in connection with "Blouses, Shirts, Pants, Shorts, Jackets, Dresses, Jumpsuits, Rompers, Loungewear, and Sleepwear excluding baby, juvenile and toddler clothing and accessories," in Class 25, as identified in the Registration. Notably, the phone number listed for Respondent is disconnected. See Exhibit C, attached hereto. Nor does Respondent appear to have a website. Id. Similarly, no reference to Respondent's mark PINKY can be found anywhere on the Internet. See Exhibit D, attached hereto.

4. Petitioner is damaged and will continue to be damaged because Respondent's continued registration of the PINKY mark stands as a bar to Petitioner's ability to federally register and protect its PINKY LOS ANGELES mark.

WHEREFORE, Petitioner prays that this Petition for Cancellation of Registration No. 4232113 be granted, resulting in judgment entered against Respondent effecting the cancellation of the Registration.

Dated: June 24, 2014

Respectfully Submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: _____

Wesley W. Lew
Attorney for Petitioner

EXHIBIT A

Trademark/Service Mark Application, Principal Register

Serial Number: 85919298

Filing Date: 04/30/2013

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85919298
MARK INFORMATION	
*MARK	<u>PINKY LOS ANGELES</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	PINKY LOS ANGELES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Vesture Group Inc.
*STREET	2220 Screenland Drive
*CITY	Burbank
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	91505
PHONE	(818) 842-0200
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	California
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025

*IDENTIFICATION	Apparel namely tank tops, cotton woven shirts, knit shirts, polo shirts, t-shirts, sweat shirts, crew neck shirt, sweatshirts, cotton jackets, leather jackets, denim jackets, outer jackets, hats, caps, visors, hoods, head bands, sweat bands, kerchiefs, scarves, bandannas, neckerchiefs, gloves, socks, shorts, pants and vests, men's, women's and children's underwear namely briefs, boxers, bikini underwear, one piece and two piece pajamas, nightgowns, nightshirts, skirts, dresses, overalls, short pants, capri pants, blouses and sweaters
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/01/2009
FIRST USE IN COMMERCE DATE	At least as early as 11/01/2009
SPECIMEN FILE NAME(S)	<u>\\TICRS\EXPORT16\IMAGEOUT</u> <u>16\859\192\85919298\xml1\ APP0003.JPG</u>
SPECIMEN DESCRIPTION	Mark on label of clothing
ATTORNEY INFORMATION	
NAME	Yakub Hazzard
FIRM NAME	Robins, Kaplan, Miller & Ciresi L.L.P.
INTERNAL ADDRESS	Suite 3400
STREET	2049 Century Park East
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90067
PHONE	310-229-5800
EMAIL ADDRESS	yhazzard@rkmc.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Shane St. Hill
CORRESPONDENCE INFORMATION	
NAME	Yakub Hazzard
FIRM NAME	Robins, Kaplan, Miller & Ciresi L.L.P.

INTERNAL ADDRESS	Suite 3400
STREET	2049 Century Park East
CITY	Los Angeles
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	90067
PHONE	310-229-5800
EMAIL ADDRESS	yhazzard@rkmc.com;ssthill@rkmc.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/Yakub Hazzard/
SIGNATORY'S NAME	Yakub Hazzard
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	04/30/2013

Trademark/Service Mark Application, Principal Register

Serial Number: 85919298

Filing Date: 04/30/2013

To the Commissioner for Trademarks:

MARK: PINKY LOS ANGELES (Standard Characters, see mark)

The literal element of the mark consists of PINKY LOS ANGELES.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Vesture Group Inc., a corporation of California, having an address of
2220 Screenland Drive
Burbank, California 91505
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Apparel namely tank tops, cotton woven shirts, knit shirts, polo shirts, t-shirts, sweat shirts, crew neck shirt, sweatshirts, cotton jackets, leather jackets, denim jackets, outer jackets, hats, caps, visors, hoods, head bands, sweat bands, kerchiefs, scarves, bandannas, neckerchiefs, gloves, socks, shorts, pants and vests, men's, women's and children's underwear namely briefs, boxers, bikini underwear, one piece and two piece pajamas, nightgowns, nightshirts, skirts, dresses, overalls, short pants, capri pants, blouses and sweaters

In International Class 025, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 10/01/2009, and first used in commerce at least as early as 11/01/2009, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Mark on label of clothing.

Specimen File1

The applicant's current Attorney Information:

Yakub Hazzard and Shane St. Hill of Robins, Kaplan, Miller & Ciresi L.L.P.

Suite 3400
2049 Century Park East
Los Angeles, California 90067
United States

The applicant's current Correspondence Information:

Yakub Hazzard
Robins, Kaplan, Miller & Ciresi L.L.P.
Suite 3400
2049 Century Park East
Los Angeles, California 90067
310-229-5800(phone)
yhazzard@rkmc.com;ssthill@rkmc.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Yakub Hazzard/ Date: 04/30/2013

Signatory's Name: Yakub Hazzard

Signatory's Position: Attorney of record

RAM Sale Number: 85919298

RAM Accounting Date: 05/01/2013

Serial Number: 85919298

Internet Transmission Date: Tue Apr 30 17:28:37 EDT 2013

TEAS Stamp: USPTO/BAS-206.169.242.254-20130430172837

169556-85919298-500a4e53cd8132fe55cc770c

4ebcd31f53eae9cba8bf3b727c16eb4cf36d5ccb

-CC-5384-20130430171110222241

PINKY LOS ANGELES



EXHIBIT B

To: Vesture Group Inc. (yhazzard@rkmc.com)
Subject: U.S. TRADEMARK APPLICATION NO. 85919298 - PINKY LOS ANGELES - N/A
Sent: 12/24/2013 10:37:10 PM
Sent As: ECOM111@USPTO.GOV
Attachments: Attachment - 1
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 85919298

MARK: PINKY LOS ANGELES

85919298

CORRESPONDENT ADDRESS:

YAKUB HAZZARD
ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
2049 CENTURY PARK E STE 3400
LOS ANGELES, CA 90067-3208

CLICK HERE TO RESPOND TO THIS LETTER
http://www.uspto.gov/trademarks/teas/response_forms.jsp

APPLICANT: Vesture Group Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO. :

N/A

CORRESPONDENT E-MAIL ADDRESS:

yhazzard@rkmc.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/24/2013

THIS IS A FINAL ACTION.

This Office action is in response to applicant's communications filed on November 14, 2013 and November 15, 2013. Please note that the substitute specimen and disclaimer are acceptable and have been entered into the record. The likelihood of confusion refusal is now withdrawn with respect to U.S. Registration Nos. 1475976 for the mark PINKY; 3820680 for the mark MISS PINKY; and 3319566 for the mark PINKEEZ and design. However, for the reasons set forth below, the refusal under Trademark Act Section 2(d) is now made FINAL with respect to U.S. Registration No. 4232113. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.64(a).

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4232113. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.*

The applicant has responded to the refusal and contends that registration is proper. It is applicant's position that here, the marks are different in commercial impression because of visual and phonetic differences. In addition, the applicant contends that numerous third-party registrations for similar wording permit registration here. Applicant's arguments have been considered and found unpersuasive for the reason(s) set forth below.

As previously noted, Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be confused, mistaken, or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). A determination of likelihood of confusion under Section 2(d) is made on a case-by case basis and the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) aid in this determination. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1349, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011) (citing *On-Line Careline, Inc. v. Am. Online, Inc.*, 229 F.3d 1080, 1085, 56 USPQ2d 1471, 1474 (Fed. Cir. 2000)). Not all the *du Pont* factors, however, are necessarily relevant or of equal weight, and any one of the factors may control in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d at 1355, 98 USPQ2d at 1260; *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity and nature of the goods and/or services, and similarity of the trade channels of the goods and/or services. *See In re Viterra Inc.*, 671 F.3d 1358, 1361-62, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1595-96 (TTAB 1999); TMEP §§1207.01 *et seq.*

COMPARISON OF MARKS

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b).

When comparing marks however, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the goods and/or services offered under applicant's and registrant's marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012); TMEP

§1207.01(b). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b).

In this case, the marks are similar in commercial impression because of their near identical appearance. The marks only differ in the applicant's addition of the geographic term "LOS ANGELES." However, the mere addition of a term to a registered mark generally does not obviate the similarity between the marks nor does it overcome a likelihood of confusion under Trademark Act Section 2(d). *See In re Chatam Int'l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (GASPAR'S ALE and JOSE GASPAR GOLD); *Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (C.C.P.A. 1975) (BENGAL and BENGAL LANCER); *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (C.C.P.A. 1967) (THE LILLY and LILLI ANN); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266 (TTAB 2009) (TITAN and VANTAGE TITAN); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002 (TTAB 1988) (MACHO and MACHO COMBOS); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (CAREER IMAGE and CREST CAREER IMAGES); *In re Riddle*, 225 USPQ 630 (TTAB 1985) (ACCUTUNE and RICHARD PETTY'S ACCU TUNE); TMEP §1207.01(b)(iii). Furthermore, the additional element is weak because it merely identifies the location in which the goods originate as demonstrated in the previously provided evidence.

Here, the marks have been considered in their entireties and have not been dissected. A trademark examining attorney may weigh the individual components of a mark to determine its overall commercial impression. *In re Chatam Int'l Inc.*, 380 F.3d 1340, 1342, 71 USPQ2d 1944, 1946-47 (Fed. Cir. 2004); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985) ("[I]n articulating reasons for reaching a conclusion on the issue of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark . . ."); *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1267 (TTAB 2011). Weighing the components here, PINKY is the dominant component because of its arbitrary meaning in relation to the goods, its position in the proposed mark, and because the additional element is merely geographically descriptive of the goods.

Consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. *See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions). *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). In addition, disclaimed matter that is descriptive of or generic for an applicant's goods and/or services is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii).

In terms of applicant's assertion that PINKY is weak, the record does not support this claim. In fact, of the 187 registrations provided by applicant, none are relevant here as they are for completely different terms. As demonstrated in the attached evidence, not only are the term Pink and Pinky different in the sound and appearance, they also have completely different meanings as "pinky" is a variant of pinkie which describes a finger. Please see the attached evidence. The weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks *in use in the marketplace* in connection with similar goods and/or services. *See Nat'l Cable Television Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de*

Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Moreover, evidence of weakness or dilution consisting solely of third-party registrations, such as those submitted by applicant in this case, is generally entitled to little weight in determining the strength of a mark, because such registrations do not establish that the registered marks identified therein are in *actual use* in the marketplace or that consumers are accustomed to seeing them. See *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1204 (TTAB 2009); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1639 (TTAB 2009); *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ 989, 992 (TTAB 1982). Furthermore, the terms listed in the third-party registrations submitted by applicant are different from those at issue and thus do not show that the relevant wording is commonly used in connection with the goods and/or services at issue.

Please also note that the cited three marks further confirm the strength of the “PINKY” element. With respect to Registration No. 1475976, it is noted that the applicant has submitted a consent agreement executed in conjunction with the prior registrant. Moreover, 1475976 and U.S. Registration Nos. 3820680 and 3319566 differ from each other and are slightly distinguishable.

Nevertheless, even if the marks are similar, prior decisions and actions of other trademark examining attorneys in registering other marks have little evidentiary value and are not binding upon the USPTO or the Trademark Trial and Appeal Board. TMEP §1207.01(d)(vi); see *In re Midwest Gaming & Entm’t LLC*, 106 USPQ2d 1163, 1165 n.3 (TTAB 2013) (citing *In re Nett Designs, Inc.*, 236 F.3d 1339, 1342, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001)). Each case is decided on its own facts, and each mark stands on its own merits. See *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Binion*, 93 USPQ2d 1531, 1536 (TTAB 2009).

Applicant’s reliance on *In re Shawnee Milling Co.*, 225 USPQ. 747, 749 (TTAB 1985) is misplaced because here, common shared element is neither highly suggestive nor merely descriptive. Moreover, the PINKY element does not play upon a commonly used registered term. As such here, the case is distinguishable. Although PINKY is used in everyday language and is not a made-up term, it is not suggestive or descriptive of the goods here.

COMPARISON OF GOODS/SERVICES

Applicant’s goods and the registrant’s goods are related because they are related clothing. Neither the application nor the registration(s) contains any limitations regarding trade channels for the goods and therefore it is assumed that registrant’s and applicant’s goods are sold everywhere that is normal for such items, i.e., clothing and department stores. Thus, it can also be assumed that the same classes of purchasers shop for these items and that consumers are accustomed to seeing them sold under the same or similar marks. See *Kangol Ltd. v. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992); *In re Smith & Mehaffey*, 31 USPQ2d 1531 (TTAB 1994); TMEP §1207.01(a)(iii).

In addition, decisions regarding likelihood of confusion in the clothing field have found many different types of apparel to be related goods. *Cambridge Rubber Co. v. Cluett, Peabody & Co.*, 286 F.2d 623, 624, 128 USPQ 549, 550 (C.C.P.A. 1961) (women’s boots related to men’s and boys’ underwear); *Jockey Int’l, Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233, 1236 (TTAB 1992) (underwear related to neckties); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991) (women’s pants, blouses, shorts and jackets related to women’s shoes); *In re Pix of Am., Inc.*, 225 USPQ 691, 691-92 (TTAB 1985) (women’s shoes related to outer shirts); *In re Mercedes Slacks, Ltd.*, 213 USPQ 397, 398-99 (TTAB 1982) (hosiery related to trousers); *In re Cook United, Inc.*, 185 USPQ 444, 445 (TTAB 1975) (men’s suits, coats, and trousers related to ladies’ pantyhose and hosiery); *Esquire Sportswear Mfg. Co. v. Genesco Inc.*, 141 USPQ 400, 404 (TTAB 1964) (brassieres and girdles related to slacks for men and

young men).

CONCLUSION

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

In view of the foregoing, the refusal to register under Section 2(d) of the Trademark Act is CONTINUED and made **FINAL**

OPTIONS

Applicant must respond within six months of the date of issuance of this final Office action or the application will be abandoned. 15 U.S.C. §1062(b); 37 C.F.R. §2.65(a). Applicant may respond by providing one or both of the following:

- (1) A response that fully satisfies all outstanding requirements;
- (2) An appeal to the Trademark Trial and Appeal Board, with the appeal fee of \$100 per class.

37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.6(a)(18); TBMP ch. 1200.

In certain rare circumstances, an applicant may respond by filing a petition to the Director pursuant to 37 C.F.R. §2.63(b)(2) to review procedural issues. 37 C.F.R. §2.64(a); TMEP §714.04; *see* 37 C.F.R. §2.146(b); TBMP §1201.05; TMEP §1704 (explaining petitionable matters). The petition fee is \$100. 37 C.F.R. §2.6(a)(15).

/IngridCEulin/
Ingrid C. Eulin
Examining Attorney
Law Office 111
(571) 272-9380
Ingrid.Eulin@uspto.gov

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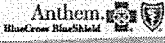
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
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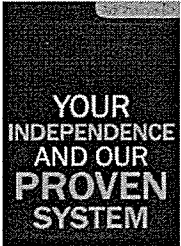
 HOUGHTON MIFFLIN

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pink-y¹  (pīng'kē) **KEY**

NOUN:

Variant of [pinkie¹](#).

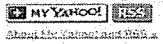


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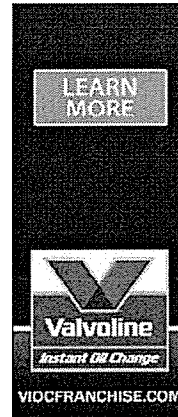
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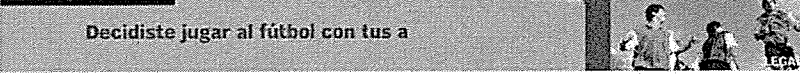

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[pink-ie¹](#) also pink-y  (pīng'kē) KEY

NOUN:

informal pl. pink-ies

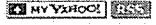


perfunctory

Definition: (adjective)
unenthusiastic, routine, or
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The little finger.

ETYMOLOGY:

Probably from Dutch *pinkje*, diminutive of *pink*, *little finger*

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pink¹ (pɪŋk) **KEY**

NOUN:

- Any of a group of colors reddish in hue, of medium to high lightness, and of low to moderate saturation.
- Any of various plants of the genus *Dianthus*, such as the carnation and sweet William, often cultivated for their showy fragrant flowers.
 - Any of various other plants, such as the wild pink and the moss pink.

[About Mr. Valvoline and RSS »](#)

- c. A flower of any of these plants.
3. The highest or best degree: *in the pink of health*.
4. pinks
 - a. Light-colored trousers formerly worn as part of the winter semidress uniform by U.S. Army officers.
 - b. The scarlet coat worn by fox hunters.
5. *Slang* A pinko.
6. A pink salmon

ADJECTIVE:

pink-er, pink-est

1. Of the color pink.
2. *Slang* Having moderately leftist political opinions.

ETYMOLOGY:

Origin unknown

OTHER FORMS:

pink'ness(*Noun*)

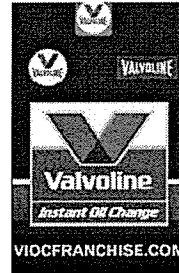
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Subject: U.S. TRADEMARK APPLICATION NO. 85919298 - PINKY LOS ANGELES - N/A
Sent: 12/24/2013 10:37:10 PM
Sent As: ECOM111@USPTO.GOV
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U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
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Please follow the instructions below:

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The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from 12/24/2013 (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

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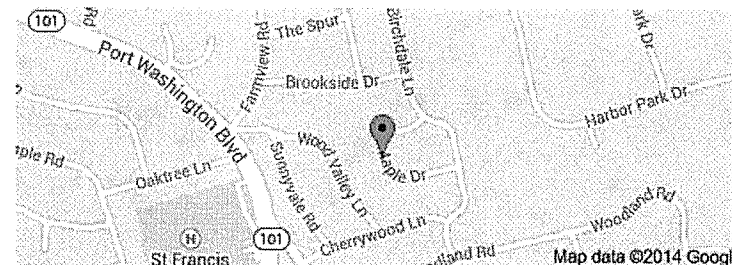
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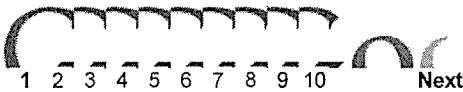
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Rating: 2.5 - 24 reviews - Price range: \$\$

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Pinky Nail Salon - New York Magazine

nymag.com › Fashion › Beauty ▼ New York Magazine ▼

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Pinky Nail Salon - NYC, NY - Prices, Hours, Reviews - Locality

locality.com/place/pinky-nail-salon-new-york-ny-1 ▼

2240 Broadway **New York** NY 10024 ... "**Pinky** herself is an eyebrow expert. ... "There are cheaper mani/pedi places, I'm sure, but **Pinky** is clean, the pedicure ...

Pinky Nails, New York - prices, hours, and ratings | Centzy

locality.com/place/pinky-nails-new-york-ny ▼

Phone: (212) 759-7717, Hours Today: 10:00am - 8:00pm, Pedicure: \$25.00, pedicure-regular: \$30.00, manicure: \$15.00. See Address & Reviews.

Pinky's Nails - Upper West Side - New York, NY - Foursquare

foursquare.com › Shop & Service › Spa ▼ Foursquare ▼

Rating: 7.7/10 - 60 votes

See 5 photos and 9 tips from 269 visitors to **Pinky's Nails**. "Ask for June - hands down the best manicures / pedicures I've rec'd in the city."

Pinky Nail Salon in Upper West Side, New York with ...

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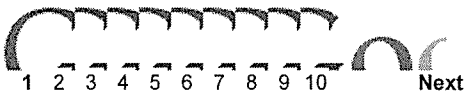
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 Mon - Sat.11am-8pm Sun 11am-7pm ...

Pinky - The New York Timeswww.nytimes.com/movies/movie/.../Pinky/overview... ▾ The New York Times ▾An overview of **Pinky**, including cast and credit details, a review summary, and more.**PINKY PILOTS ART NEW YORK - pinky pilots new york**www.pinkypilots.com/#!new-york-art/c1n32 ▾

PINKY PILOTS ART NEW YORK. ... ONE WAY ONE LOVE. ONE WAY ONE LOVE
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List of Pinky and the Brain episodes - Wikipedia, the free ...en.wikipedia.org/wiki/List_of_Pinky_and_the_Brain_episodes ▾ Wikipedia ▾

Pinky and the Brain was later retooled as the short-lived **Pinky**, Elmyra, and the
Pinky and the Brain travel east around the world and reach **New York**, and ...

Pinky Visits New York - CreateSpace<https://www.createspace.com/4058743> ▾

Nov 14, 2012 - **Pinky** and her family visit **New York City** and part of their adventure is
 the train trip they take to get there. Come along with **Pinky** as she takes a ...

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Pinky Club Ring - Bittersweets New Yorkwww.bittersweetsny.com/cart/rings016.php ▾

14k gold **pinky** rings for you and your BFF! These delicate but sturdy rings are
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Supreme Onyx Pinky Ringwww.supremenewyork.com/previews/.../onyx-pinky-ring ▾ Supreme ▾

Supreme. The official website of Supreme. EST 1994. NYC.

Pinky Threading Salon - New York, NY | Groupon<https://www.groupon.com/biz/new-york.../pinkys-threading-sal...> ▾ Groupon ▾

Bhranti Patel, known by her nom de pluck, **Pinky**, shapes clients' brows and cleanses
 skin at the eponymous **Pinky's** Shape Threading Salon. For 15 years ...

WU-TANG CLAN LYRICS - Uzi (Pinky Ring) - A-Z Lyricswww.azlyrics.com/lyrics/wutangclan/uzipinkyring.html ▾

Lyrics to "Uzi (**Pinky Ring**)" song by WU-TANG CLAN: [U-God] Yo.. yeah Don't ...
 That **pinky** ring shit yo ... So nice like **New York** they had to name him twice

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Rick Ross In **New York** "Kiss My **Pinky Ring**" Official Music ...


www.youtube.com/watch?v=J2JbJuZU6i0 ▼

Feb 20, 2009 - Uploaded by gmoneymusic101

<http://mmehiphopnews.ning.com> Oh Oh!! looks like Boss ant down for that 10 count yet! and it looks like he went ...

Pinky Patel - Greater **New York City** Area profiles | LinkedIn

www.linkedin.com/pub/dir/Pinky/.../us-70-Greater-New-York-City-Area ▼

 ... City Area. There are 9 professionals named **Pinky Patel** in the Greater **New York City** Area, who use LinkedIn to exchange information, ideas, and opportunities.

Pinky Otto : Racked **NY**

ny.racked.com/tags/pinky-otto ▼

 Posts about **Pinky Otto** on Racked **NY**. ... Additionally, the **New York** micro-chain recently launched e-commerce by way of boutique-driven Shoptiques.com.

New York, New York – Uzi (**Pinky Ring**) by Wu-Tang Clan

rapgenius.com/2856520/Wu...pinky.../New-york-new-york ▼ Rap Genius ▼

 The way this is pronounced makes it an allusion to Frank Sinatra's "**New York, New York**", but it is also a possible allusion back to Meth's second line.

\$15.7M **Pinky ring**: Heiress diamond auctioned after 7 ...


nypost.com/.../15-7m-pinky-ring-heiress-diamon... ▼ New York Post ▼
by Amber Sutherland

 Apr 18, 2012 - \$15.7M **Pinky ring**: Heiress diamond auctioned after 7 decades in Home Sections Search Sign in / Register Subscribe Follow **New York Post**.

PRIS MINI **Pinky Ring** — MING YU WANG **NEW YORK**

mingyuwangnewyork.com/shop/pris-mini-pinky-ring ▼

 PRIS MINI **Pinky Ring**. 125.00. #MYW05GP010. SS14 Collection. Sizes: US 2, 3, 4; Overall Pyramid: 11/16" x 3/8" / 1.7cm x 1cm; Handmade. 18K Gold Plated ...

Thestreetfashion5xpro: In the Street...**Pinky Linda, New York**

thestreetfashion5xpro.blogspot.com/.../in-streetpinky-linda-new-york.ht... ▼

 In the Street...**Pinky Linda, New York**. Pubblicato da TheStreetFashion5xpro a 13:23.
Labels: Linda ... My Work...New Campaign Baldinini FW 13/14 Backstage ...

Nicka K **New York** Nail Color - **Pinky Promise** | Beauty Box ...

www.beautybox5shop.com/.../nicka-k-new-york-nail-color-pinky-promi... ▼

SIZE: 0.5 fl oz BEAUTY DESCRIPTION This pretty formaldehyde-free polish goes on smooth and offers even, long-wear coverage! Plus, the sleek bottle has a ...

Pinky McCoy (**Pinky_McCoy**) on Twitter

https://twitter.com/Pinky_McCoy ▼

 The latest from **Pinky McCoy** (@**Pinky_McCoy**). Personality Love Yourself email: pmccoyradio@gmail.com #missmccoysopinion #missmccoy. Bronx, **NY**.

Pinky's New York Cheese Cake Inc - USA YellowPages

www.usaypage.com/.../pinky-s-new-york-cheese-cake-inc-p32488.html ▼

Pinky's New York Cheese Cake Inc is Bakers & Bakeries company at Philadelphia , Pennsylvania, Tel is (215)735-2967, address is 1824 South Street.

Searches related to **pinky new york**

- pinky new york **magazine**

pinky **nail salon reviews**

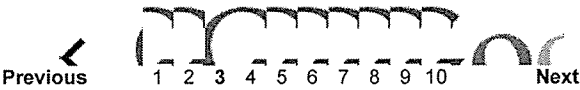
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